

IN THE SUPREME COURT OF THE UNITED STATES

Number: _____

Thomas James,
Petitioner

v.

United States of America,
Respondent.

APPLICATION TO PROCEED *IN FORMA PAUPERIS*

Applicant, Thomas James, through appointed counsel, respectfully applies to proceed *in forma pauperis* under Rule 39 of this Court and under 18 U.S.C. §3006A(d)(7). James is currently incarcerated, unable to pay for filing of his writ of certiorari, and his attorney was appointed under the Criminal Justice Act of 1964, 18 U.S.C. §3006A.

Respectfully submitted:

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Dated: August 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2019, I provided a copy of this Motion to

Proceed In Forma Pauperis to:

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/s/ Mark D. Plaisance
MARK D. PLAISANCE

NUMBER: _____

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS JAMES,
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vs.

UNITED STATES OF AMERICA
Respondent.

On Petition For Writ Of Certiorari
To The United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

A passenger's Fourth Amendment expectation of privacy does not emanate solely from the concept of real or personal property. It is derived from the expectation that as a passenger one retains a reasonable expectation of privacy that one may assert. A person, then, particularly a passenger, need not always have a recognized common-law property interest in the place searchable to claim a reasonable expectation of privacy in it. Two interrelated questions emerge:

(1) Why is the owner of a vehicle entitled to challenge the seizure from it of evidence even if he is absent at the time of the search, while a nonowner enjoying in person, and with the owner's permission, the privacy of an automobile, is not so entitled, *Rakas v. Illinois*, 439 U.S. 128, 164, 99 S.Ct. 421, 441, 58 L.Ed.2d 387 (1978)(White, J., dissent), particularly when the district court grants the driver's motion to suppress evidence on grounds as lessee only he could consent to a search?

(2) Does *Byrd v. United States*, 138 S.Ct. 1518, 200 L.Ed.805 (2018) (mere fact that a driver in lawful possession or control of a rental car is not listed as an authorized driver on rental agreement will not defeat his or her otherwise reasonable expectation of privacy under the Fourth Amendment), extend to a passenger lawfully in an automobile standing to invoke the exclusionary rule and challenge the search of that vehicle in which he has no ownership or possessory interest?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

United States of America, through the Solicitor General of the United States.

Thomas James, an individual and the defendant.



CORPORATE DISCLOSURE

The **United States of America** is a body politic and the federal government. The Solicitor General of the United States is the representative of the United States in matters before this Court.

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OPINION BELOW

In a per curiam opinion, the United States Fifth Circuit Court of Appeals held the district court did not err in denying James' motion to suppress on the grounds he lacked standing – as a passenger – to challenge a search. *United States v. James*, 770 Fed.Appx. 770 (2019)(Appendix 1), citing *Rakas*, *United States v. Riazco*, 91 F.3d 752 (5th Cir. 1996).

◆

BASIS FOR SUPREME COURT JURISDICTION

Thomas James seeks review of the United States Fifth Circuit Court of Appeals decision by writ of certiorari. This Court has jurisdiction under 28 U.S.C. §1254(a) to review the decision of a court of appeals. This application is timely filed under 28 U.S.C. §2101(d), as outlined in United States Supreme Court Rule 13.1. A pauper application is also attached.

◆

STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A traffic stop and search, the consent to search ultimately held coerced, resulted in James facing a three-count federal indictment for (1) conspiracy to make and pass counterfeit checks, produce fraudulent identification documents and use unauthorized access devices, (2) access device fraud, and (3) aggravated identity theft.

James was the front-seat passenger in a vehicle stopped by a Baton Rouge, Louisiana, narcotics criminal patrol unit on Interstate 10. The vehicle, driven by Walter Glenn, was ostensibly stopped for a tinted plexiglass licence plate cover that Sgt. Donald Dawsey believed violated La. R.S. 32:53. After the stop, as Dawsey approached the passenger's side, he noticed one or two screwdrivers in the driver's door console.

Glenn told Dawsey that he, James, and a third passenger, Larry Walker, were returning from a family cookout in Beaumont, Texas. *United States v. Walker*, 706 Fed.Appx. 152, 154 (5th Cir. 2017). He also advised Dawsey the vehicle was rented days earlier by Walker.¹

Rather than call to check Glenn's information as he said, Dawsey called for backup officers to assist in a search of the vehicle. During the search, officers did not find any drugs, but confiscated fourteen items found in the trunk, including blank checks, computer devices, blank ID cards, and \$95,000 cash. The three men were arrested and subsequently indicted for one count of possession of fifteen or more

¹ Walker filed a separate appeal on other grounds. *Walker*, supra.

unauthorized access devices.

A superceding indictment charged James, Green and Walker, with three counts:

- (1) conspiracy and agreement to make and pass counterfeit checks, produce fraudulent identification documents, and use unauthorized access devices in violation of 18 U.S.C. §514(a)(1) and (2); 18 U.S.C. §1028(a)(1); and 18 U.S.C. §1029(a)(2).
- (2) knowingly and with intent to defraud, possessing at least 15 unauthorized access devices, i.e., social security numbers with said possession affecting interstate commerce. 18 U.S.C. §1029(a)(3) and 18 U.S.C. §2; and
- (3) knowingly possessing, without lawful authority, multiple means of identification of other individuals, including numerous social security numbers, during in and relation to the access device fraud described in count two, in violation of 18 U.S.C. §1028(a).

The superceding indictment also sought forfeiture of more than \$95,000 in cash and numerous computers and printers.

The defendants all filed motions to suppress, with Glenn and James contesting the justification for the initial stop, all three contesting the stop, and Walker contesting the search of the vehicle. After a hearing, the district court denied Walker's motions as to the legality of the stop, but granted his motion to suppress because the search was conducted in violation of the Fourth Amendment; Walker did not give voluntary consent. The court denied James's motion, finding he was not unlawfully seized and had no standing to challenge the search. *Walker*, at 156.

The United States Government appealed. The Fifth Circuit affirmed. *Walker*, 706 Fed.Appx. 152. It held law enforcement never asked Walker for consent to search; that Dawsey never informed Walker, as the vehicle's renter, he alone, not Glenn, could

consent for a search of the vehicle. *Id.* The court did not address the lawfulness of the search of any personal effects, finding none of the defendants raised the issue. *United States v. Glenn*, 204 F.Supp.3d 893, 908, fn. 11 (M.D. La. 2016). The government subsequently dismissed charges against Walker.

James joined Glenn in a supplemental motion to suppress, asserting a personal right to object to the general search of the vehicle and an explicit right to object to the search of personal effects. The two remaining defendants argued that Louisiana law afforded them protection from an illegal search and, as driver, Glenn lacked authority to give law enforcement consent to search any personal belongings. Here, the court ultimately learned, James had luggage in the vehicle's trunk.

The government objected on grounds that the defendants' motion was a backdoor attempt to reopen the earlier suppression hearing. In particular, the government argued James (and Glenn) did not have standing to challenge the search of the vehicle. And it argued that James, to assert standing to challenge the search of certain bags in the vehicle, must establish an actual, subjective expectation of privacy with respect to the place being searched or items being seized, and that his expectation of privacy is one recognized as reasonable. At best, the government summarized, James might meet his burden to challenge the search and seizure of a specific bag or bags, but no more.

The district court, on November 13, 2017, initially ruled that re-opening the suppression issue was proper under the facts herein. The court found that, in response to Dawsey's questioning, James claimed a "black clothes bag" containing medication and a second bag, the description of which was inaudible on Dawsey's dashcam video.

The district court ruled that James lacked standing to challenge the search of the vehicle, but had standing to challenge the search of a closed container or bag to which he had possessory interest. It granted James's motion to suppress a search and seizure of the black bag and its contents (although the government had indicated it did not intend to introduce any evidence from that bag), but denied his motion to suppress the search and seizure of the second unidentified bag (if the government ultimately sought to introduce evidence from that bag) or any other bag. The court said:

By claiming ownership in the black bag and an unidentified bag, James by implication denied ownership of any other bag found in the car and lacks standing to challenge the search of any other bag.

Subsequent to the court's ruling, James and the government entered into a conditional plea agreement. James agreed to plead guilty as charged in the superceding indictment, reserving his right to seek review of the motion to suppress. No other agreement was reached and, except for the right to seek review of the motion to suppress, James waived his right to appeal his conviction and sentence and his right to challenge the conviction and sentence in any post-conviction proceeding.

James entered his plea on December 11, 2017. After several post-plea issues were resolved, the court sentenced James to 60 months imprisonment on Count one, 64 months imprisonment on Count two (to run concurrently), and 24 months consecutive imprisonment on Count three, for a total term of 88 months. The court imposed various requirements for James to satisfy upon release and while on supervision. It ordered the federal sentence to run concurrently with any sentence imposed by the Louisiana 18th Judicial District Court and any sentence from an active

warrant in Pennsylvania. The court also ordered \$949,587.87 in restitution.

James timely appealed. He asserted that, as a passenger, he faced incarceration while the vehicle's driver escaped criminal responsibility because the court ruled the driver was coerced (and not the proper party) to give consent to the search. There is no evidence that James was aware of the vehicle's contents other than his bags in the trunk (which the court suppressed as to one bag; the government indicating it did not intend to introduce the second bag or its contents as evidence). James argued although a passenger, he has standing to challenge the illegal search based in part on this Court's recent *Byrd v. United States*, 138 S.Ct. 1518, 200 L.Ed.2d 805 (2018) decision and *Brendlin*. Otherwise, law enforcement – who seek the passenger but not a driver – could pretextually stop a vehicle, ignore its illegal search against the driver, but count upon using the confiscated evidence against the passenger.

ARGUMENT

Although a passenger, James had standing to challenge the stop, the illegal search, and the illegal seizure of effects from the vehicle.

Under well-established law, a person is seized by the police and thus entitled to challenge the government's action under the Fourth Amendment when the officer, "by means of physical force or show of authority" terminates or restrains the person's freedom of movement. *Florida v. Bostick*, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991), quoting *Terry v. Ohio*, 392 U.S. 1, n. 16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A seizure occurs if "in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." *United States v.*

Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). A traffic stop entails a seizure even though the purpose of the stop is limited and the resulting detention quite brief. *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). Thus, stopping an automobile and detaining its occupants constitutes a “seizure” within the meaning of the Fourth and Fourteenth Amendments. *Colorado v. Bannister*, 449 U.S. 1, 101 S.Ct. 42, 66 L.Ed.2d 1 (1980)(per curiam)(There can be no question that the stopping of a vehicle and the detention of its occupants constitute a “seizure” within the meaning of the Fourth Amendment).

Consequently, although a passenger, James was “seized” when the rental vehicle was stopped. And as a seized individual he has the standing and the right to challenge not only the stop, but the subsequent search. *See in part, Brendlin, supra* (passenger seized from moment vehicle stopped on side of road, giving him standing to challenge constitutionality of stop). *Rakas v. Illinois*, 4439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978)(a defendant has standing to contest the validity of a search when (1) the defendant is able to establish an actual, subjective expectation of privacy with respect to the place being searched, and (2) the expectation of privacy is one which society would recognize as objectively reasonable).

Holding that a passenger seized in a traffic stop has no legal protection to challenge the stop and search invites police officers to stop cars with passengers regardless of probable cause or anything illegal. *Brendlin*, 551 U.S. at 263; 127 S.Ct. at 2410. And the fact that evidence uncovered as a result of an arbitrary traffic stop

would still be admissible against any passengers would be a powerful incentive to run the kind of “roving patrols” that violate the driver’s Fourth Amendment right. *Id.*

Here, the district court found the search illegal as to Walker, but not to James and Glenn, the latter individuals not “enjoy[ing] a possessory interest in the rental car ...” *United States v. Glenn*, 204 F.Supp.3d at 907. The Fifth Circuit similarly ruled that “[a] passenger without a propriety or possessory interest in a vehicle that was searched has no reasonable expectation of privacy in the car itself.” *United States v. James*, 770 Fed.Appx. 700 (5th Cir. 2019).

But James need not have a possessory interest to be seized and have a constitutional right to challenge the illegal search. As a passenger, James has an expectation of privacy in a vehicle in which he is traveling. James, like any passenger, should feel secure and safe that law enforcement will not simply stop the vehicle for a minor traffic violation then rely upon the alleged consent of the driver, who has no authority, to search the vehicle for alleged contraband.

This court in *Brendlin* concluded nine federal courts of appeal, nearly every state, and numerous treatise writers share the prevailing view that a passenger has standing to bring a Fourth Amendment challenge to the legality of a traffic stop.

If either the stopping of the car, the length of the passenger’s detention thereafter, or the passenger’s removal from it are unreasonable in a Fourth Amendment sense, then surely the passenger has standing to object to those constitutional violations and to have suppressed any evidence found in the car which is their fruit. *Brendlin*, 551 U.S. at 259.

The entitlement to an expectation of privacy does not hinge on ownership or

possessory interest. *Jones v. United States*, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960) (individual legitimately present in friend’s apartment may object to search of apartment); *Brown v. United States*, 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed. 208 (1973)(one basis for Fourth Amendment protection is presence “on the premises at the time of the contested search and seizure”). James’s Fourth Amendment expectation of privacy does not emanate solely from the concept of real or personal property. It is derived from the expectation that as a passenger he retains a reasonable expectation of privacy that he may assert. This Court recently clarified this legal position in *Byrd v. United States*, 138 S.Ct. 1518, 200 L.Ed.2d 805 (2018):

This Court in *Rakas* did not hold that passengers cannot have an expectation of privacy in automobiles. To the contrary, the Court disclaimed any intent to hold “that a passenger lawfully in an automobile may not invoke the exclusionary rule and challenge a search of that vehicle unless he happens to own or have a possessory interest in it. 439 U.S. at 150, n. 17, 99 S.Ct. 421 (internal quotation marks omitted).

The *Byrd* court again recognized the well-established rule that “a person need not always have a recognized common-law property interest in the place searchable to be able to claim a reasonable expectation of privacy in it.” *Id.* at 1527, citing, among others, *Jones*, *supra*. *Byrd* merely followed the line of cases that “one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude.” *Byrd*, citing Justice Powell’s observation in *Jones*.

The appellate court apparently read *Brendlin* as holding that a passenger only has standing to challenge the constitutionality of the traffic stop itself and not the

subsequent search. Such a holding penalizes James because the district court found on a co-defendant's motion that the search was illegal for lack of consent. To find that James had no standing subjects him to the whim of the driver, who may or may not have authority to consent to a search. Here, Walker escapes criminal liability, while James, a mere passenger, receives more than seven years imprisonment. The poor passenger is thus at the mercy of the driver or owner of the vehicle and subject to punishment for whatever contraband the vehicle carries. *See Rakas*, 439 U.S. at 441, 99 S.Ct. at 164, where Justice White posed the precise question herein:

And why should the owner of a vehicle be entitled to challenge the seizure from it of evidence even if he is absent at the time of the search, while a nonowner enjoying in person, and with the owner's permission, the privacy of an automobile is not so entitled?

While the reasonableness of expectation of privacy in a vehicle may be weaker than that of a home, the search of a vehicle remains a substantial invasion of privacy. Nonetheless, if a visitor maintains the right to stop, contest, or challenge the search of a house, then a passenger should enjoy the same Fourth Amendment privilege relative to a vehicle, regardless of possessory interest or ownership:

What a person knowingly exposes to the public, even in his own home or office, is not subject of Fourth Amendment protection But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

See also, Mancusi v. DeForte, 392 U.S. 364, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968) (The protection of the [Fourth] Amendment depends not upon a property right in the invaded place but upon whether the area was one in which there was a reasonable

expectation of freedom from governmental intrusion).

Granted, in *Rakas*, the court, 5-4, found a passenger – who did not have a property or possessory interest in an automobile nor an interest in the property seized – not entitled to challenge the search of a glove compartment or area under the seat of a vehicle. This decision has been cited often since, but not necessarily for its narrow holding. In *United States v. Iraheta*, 764 F.3d 455 (2014), for example, the Fifth Circuit focused on the proponent (standing) element, using other jurisprudence to conclude the source of a defendant’s expectation of privacy is based upon concepts of “real or personal property law or to understandings that are recognized and permitted by society.” *Id.* at 461 (internal citations omitted).

But *Iraheta*, *supra*, and its progeny focus the majority of its interest on claims to suppress searches of luggage or personal property, not a general search of the vehicle. *Iraheta* at 461, 462 (internal citations omitted) (because passengers have standing to challenge searches to their baggage, the owner of a suitcase located in another’s car may have a legitimate expectation of privacy with respect to the contents of the suitcase);² *United States v. Cantu*, 426 Fed.Appx. 253 (5th Cir. 2011)(although driver consented to search of vehicle and passenger did not verbally object to officer’s search of passenger’s closed purse and bag, search of these items violated passenger’s rights under Fourth Amendment).

While a portion of the issue here concerned the search of James’s bag (the court

² The court suppressed the evidence for all defendants since the defendants were jointly tried. *Iraheta*, *supra*, fn. 4.

suppressed the search of an identified bag, but not the search of a second bag which James could not identify), the primary and real issue is whether James, as a passenger, can suppress the other items seized from the vehicle while Walker, the driver, escapes liability. *Brendlin* gives James standing to assert a motion to suppress. *See United States v. Grayon*, 2019 WL 1427461 (U.S.D.C. S.Car. 2019), interpreting *Brendlin*, 551 U.S. at 257: If the traffic stop was not supported by reasonable suspicion or if the stop was impermissibly prolonged, the passenger is entitled to suppress any evidence discovered from the illegal seizure.³

Byrd continues the court's efforts to expand the rights of a driver who is not the owner. 138 S.Ct. at 1531. *Byrd* distinguishes itself from those cases involving passengers, however, since the driver was the sole occupant. The Court ultimately held that now, as a general rule, someone in otherwise legal possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as the authorized driver. *Byrd*, 138 S.Ct. at 1524.

The scope of the search herein is but a rational extension of *Byrd* and other Fourth Amendment cases. The trial court found that because Walker could not give consent for a search of the vehicle, the seized evidence could not be used against him. But it could be used against the passengers, who, because the court ruled have no property or possessory interest in the vehicle, have no Fourth Amendment right to exclude the matters seized.

³ The government conceded this court's *Byrd* holding extends to passengers in a rental car. *Grayon*, 2019 WL 1427461, p. 6.

In contrast to federal law, Louisiana provides on the other hand that any person “adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court. La. Const. art. I, §5. Thus, “[t]here is no equivalent under Louisiana constitutional law to the federal rule that one may not raise the violation of a third person’s constitutional rights.” *State v. Owen*, 453 So.2d 1202 (La. 1984). In Louisiana, as a general matter, whether the defendant is the driver **or a passenger** of a vehicle stopped by the police has no bearing on whether he may challenge the lawfulness of a subsequent search of the car. (Emphasis added). *See e.g., State v. Smith*, 2007-0815 (La. App. 5 Cir. 3/11/08), 982 So.2d 821 (upholding denial of motion to suppress cocaine retrieved from vehicle in which defendant was riding as a passenger); *State v. Scul*, 1993-2360 (La. App. 4 Cir. 6/30/94), 639 So.2d 1239 (affirming grant of motion to suppress currency retrieved from glove compartment of vehicle in which defendant was a passenger after police lawfully stopped the car on reasonable suspicion of criminal activity).

So while the defendant was in a vehicle stopped in Louisiana, ostensibly for violation of a Louisiana traffic violation, he now faces a federal prison sentence because he was prosecuted in federal court where the appellate courts interpret the United States Fourth Amendment more stringently than Louisiana courts apply the state constitution. The co-existence of state and federal law requires similar application of one’s rights. The Fifth Circuit’s ruling is clear vis-à-vis personal items: “We have recognized that passengers have standing to challenge searches to their luggage.” *Iraheta*, 764 F.3d at 462; *United States v. Jaras*, 86 F.3d 383, 389 (5th Cir. 1986);

United States v. Buchner, 7 F.3d 1149 (5th Cir. 1993). *See also*, *United States v. Turner*, 2015 WL 12965291 (W.D. Tex 2015)(defendant had reasonable expectation of privacy as to plastic bag which contained gift cards).

Reason requires that the court apply the same privacy expectation to a passenger regarding the entire vehicle. A suitcase, luggage bag, travel bag, or other types of containers are generally placed in the trunk for transportation. The Fourth Amendment is not so fragile as to give protection against search of the container, luggage bag, travel, or suitcase, but forbid the passenger from asserting control and privacy over the adjacent area. What good is the right to assert protection from search of items within the trunk if one cannot assert the right against search of the adjacent area or area over which law enforcement must travel to reach the item not searchable? The question and answer are rhetorical, especially when the court considers further that the passenger also has the right to challenge the legality of the stop. *United States v. Lawson*, 782 F.Supp. 1546 (S.D. Fla. 1992)(passenger in automobile had standing to challenge traffic stop of the vehicle as pretextual). *Rakas*, *supra*.

Indeed, a traffic stop necessarily detains the passenger just as much as the driver. And police activity into the alleged misconduct of the driver often becomes inquiry into alleged misconduct of the passengers. The expectation of right of privacy to both driver and passenger are no different. Although the driver exerts physical control over the vehicle's path, direction, and maneuverability, the passenger, alike, has control over the interior of the vehicle and of the trunk, particularly when the passenger articulates ownership of items therein contained.

CONCLUSION

Certiorari should be granted for this Court to fortify the rights of passengers to challenge not only an illegal stop but an illegal search of the vehicle. The appellate court decision is at odds with the logic of the Fourth Amendment and this court's decisions in *Brendlin* and *Byrd*. The law cannot remain so stagnant as to give a passenger an expectation of privacy in his luggage and their right to challenge an illegal stop but not to his immediate area or within a vehicle in general.

Here, the driver escapes any responsibility because he is able to suppress the search on grounds he did not have authority to consent to the search of a vehicle rented in another person's name. Yet, as an innocent passenger, James, at least according to the trial court and appellate court, does not have standing to assert the search was in violation of his Fourth Amendment rights. According to the lower courts here, no passenger, without an ownership or possessory interest, and regardless of his relationship to the owner or (here) renter, may claim Fourth Amendment protection against illegal searches. This holding is incorrect.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2019, I provided a copy of this Writ of Certiorari by overnight Federal Express to:

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U.S. Department of Justice
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Washington, DC 20530-0001

Mary Patricia Jones
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/s/ Mark D. Plaisance
MARK D. PLAISANCE

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-30834
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 24, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

THOMAS JAMES,

Defendant-Appellant

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:15-CR-138-3

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Thomas James entered a conditional guilty plea to conspiracy to make and pass counterfeit checks, produce fraudulent identification documents, and use unauthorized access devices; access device fraud; and aggravated identity theft. He appeals the district court's denial of his motion to suppress evidence found during a search of a stopped rental car in which he was a passenger. The district court found that James lacked standing to contest the search of the car.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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We review the district court's findings of fact for clear error, viewing the evidence in the light most favorable to the prevailing party, and consider legal conclusions de novo. *United States v. Hernandez*, 647 F.3d 216, 218 (5th Cir. 2011). The question whether James has standing to contest the search of the car is an issue of law that we review de novo. *See United States v. Riazco*, 91 F.3d 752, 754 (5th Cir. 1996).

To assert the protections of the Fourth Amendment, a person must have "a legitimate expectation of privacy in the invaded place." *Hernandez*, 647 F.3d at 219. A passenger without a propriety or possessory interest in a vehicle that was searched has no reasonable expectation of privacy in the car itself. *Rakas v. Illinois*, 439 U.S. 128, 148 (1978); *United States v. Greer*, 939 F.2d 1076, 1093 (5th Cir. 1991), *op. reinstated in part on reh'g*, 968 F.2d 433 (5th Cir. 1992). Because James contends only that he had a privacy expectation as a passenger qua passenger, and the record does not reflect that he owned, rented, drove, or had control or authority over the car, he lacked standing to contest the search. *See Rakas*, 439 U.S. at 148; *Greer*, 939 F.2d at 1093; *Riazco*, 91 F.3d at 754-55. He does not challenge the lawfulness of the initial stop and, thus, cannot assert that the evidence recovered during the resulting search should be suppressed as fruits of illegal activity. *See United States v. Powell*, 732 F.3d 361, 375 (5th Cir. 2013). He did not gain control over the car by placing his bags in the trunk. *See United States v. Iraheta*, 764 F.3d 455, 462 (5th Cir. 2014).

James contends that the recent decision in *Byrd v. United States*, 138 S. Ct. 1518, 1527, 1531 (2018), which held that a driver in lawful possession or control of a rental car has a reasonable expectation of privacy even if he is not on the rental agreement, supports that he may challenge the search. However, there is no indication that *Byrd* implicates whether a passenger, like James, with no possessory or property interest in a car has a reasonable expectation

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of privacy. *See Byrd*, 138 S. Ct. at 1526-31. We have not held otherwise and must follow our controlling authority. *See United States v. Lipscomb*, 299 F.3d 303, 313 n.34 (5th Cir. 2002).

Thus, the district court did not err in denying James's motion to suppress on the ground that he lacked standing to challenge the search. *See Rakas*, 439 U.S. at 148; *Riazco*, 91 F.3d at 754-55. Accordingly, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance and the alternative motion for an extension of time to file a brief are DENIED.